Hazardous Materials Information Review Commission

2010-2011

Departmental Performance Report

The Honourable Leona Aglukkaq
Minister of Health
Government of Canada

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President's Message

As President and Chief Executive Officer of the Hazardous Materials Information Review Commission (HMIRC), it is my pleasure to submit to Parliament and to Canadians our 2010-11 Departmental Performance Report. This report provides a summary of the Commission's performance and the resources required in the last fiscal year in order to fulfil its mandate. The mandate of the Commission is to act as a national mechanism to protect the trade secrets of companies operating in Canada while ensuring compliant health and safety information for workers. This aligns us with the Government of Canada's strategic outcome of Healthy Canadians and, as well, supports the outcome of A Fair and Secure Marketplace.

The crowning achievement of 2010-11 has been the elimination of the backlog of claims for exemption. This backlog had accumulated over several years due to an increase in the volume and complexity of claims, causing a delay in the provision of accurate health and safety information. Beginning in 2008, however, a three-year initiative was funded and implemented to specifically address this situation. Now the backlog is gone, the Commission can focus its efforts in other important areas, such as improving earlier compliance in associated Material Safety Data Sheets (MSDSs) submitted by claimants while ensuring that claim applications are processed expediently.

Over the past year the Commission has continued to explore and develop ways to support the three strategic directions endorsed by HMIRC's Council of Governors. These directions are: enhancing proactive compliance with Workplace Hazardous Materials Information System (WHMIS) requirements, improving the translation and dissemination of HMIRC knowledge on hazard classification and communication, and increasing partnerships. An example where the Commission can count success in earlier compliance is in claimant acceptance of undertakings, resulting in fewer orders, and the ongoing use of the MSDS checklist, both of which allow verified health and safety information to be made available earlier to workers. This is substantiated by an overall continuing decrease in MSDS violations.

Organizational alignment and cohesion has been strengthened through the implementation of HMIRC's Integrated Plan 2010-12. The Plan effectively links the activities carried out by the Commission to short, medium and long term outcomes, the strategic directions and the mandate. A logic model has been developed which offers a clear illustration of these links and this has been distributed across the Commission. An operational component provides the necessary detail of resources and an evaluation methodology has established indicators and targets for measuring achievement.

Regarding another aspect of the Commission, the Strong Workplace Action Team (SWAT), a working group of employees from across the organization, has done an admirable job in identifying and consulting widely on issues in the workplace and in proposing solutions. SWAT has been committed to making HMIRC a workplace of

choice that is healthy, productive and accountable with a workforce that is responsible and engaged.

I am indebted to HMIRC staff for their valuable and solid contribution to realizing the Commission's goals, and to the Council of Governors for their ongoing dedication and support. I am proud of the significant accomplishments we have made at the Commission in the last year, especially through collaboration and innovation, and that we are continually improving health and safety information for Canadian workers.

Sharon A. Watts
President and CEO

SECTION I: ORGANIZATIONAL OVERVIEW

Raison d'être

The Hazardous Materials Information Review Commission (HMIRC) provides a single mechanism under federal, provincial and territorial legislation to protect the trade secrets of companies that supply or use hazardous materials, and ensures that Canadian workers who handle such materials have all the information they need to do so safely.

Responsibilities

The Commission enables companies to protect their trade secrets and, at the same time, ensures that Material Safety Data Sheets (MSDSs) for products with trade secrets used by workers in Canada disclose complete and accurate information to reduce workplace-related illness and injury. The Commission's activities are key components of the Workplace Hazardous Materials Information System (WHMIS), which was created in 1987 through a consensus between workers, industry and government. The success of WHMIS depends on cooperation among all these partners. All three groups play an integral part in ensuring that chemical products are used as safely as possible in Canadian workplaces.

WHMIS requires that suppliers provide employers with MSDSs and product labels which detail information on the hazards of materials sold for use in Canadian workplaces. The employers, in turn, provide these MSDSs and labels to workers and, as well, training on how to handle the products safely. A product's MSDS must fully disclose all hazardous ingredients in the product, their toxicological properties, the safety precautions workers need to take when using the product, treatment required in the case of injury, and other pertinent information.

When a supplier introduces a product and wants to protect the identity or concentration of one or more of the hazardous ingredients, according to the *Hazardous Materials Information Review Act* (HMIRA), the company needs to apply to HMIRC for an exemption from the requirement to list all hazardous ingredients on the product's MSDS. Once HMIRC registers a claim, the product can be made available in the marketplace without disclosing the confidential business information. The Commission then evaluates the claim and issues a decision on its validity and, to protect workers, verifies the compliance of the MSDS with the *Hazardous Products Act* and the *Controlled Products Regulations*.

When an employer purchases a product and wants to protect the identity and/or concentration of any hazardous ingredients, or the name and the supplier of the product, according to the HMIRA, the company also needs to apply to HMIRC for an exemption.

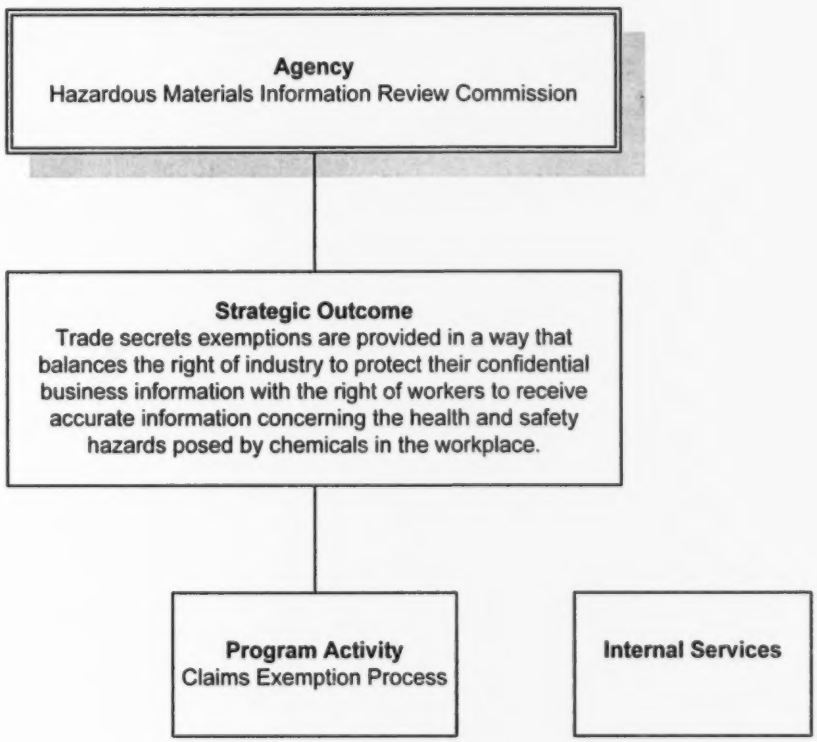
In this case, in addition to issuing a decision on the claim's validity, the Commission evaluates the MSDS and, if necessary, the label, against the requirements of either the *Canada Labour Code*, for federally regulated employers, or the relevant provincial or territorial occupational health and safety legislation.

Where areas of non-compliance are identified, the Commission offers claimants the opportunity to make corrections through voluntary compliance undertakings. If the claimant chooses not to accept the undertaking, the Commission issues formal orders obligating the claimant to make the changes.

In cases where there are disputes that cannot be resolved, HMIRC convenes independent boards to hear appeals from claimants or affected parties challenging decisions and orders or from affected parties challenging undertakings signed by claimants and accepted by HMIRC.

In addition, HMIRC responds to requests from federal, provincial or territorial government health and safety officials for information about claims for exemption to help these officials administer and enforce their WHMIS obligations.

Strategic Outcome and Program Activity Architecture (PAA)


Agency
Hazardous Materials Information Review Commission
Strategic Outcome
Trade secrets exemptions are provided in a way that balances the right of industry to protect their confidential business information with the right of workers to receive accurate information concerning the health and safety hazards posed by chemicals in the workplace.
Program Activity
Claims Exemption Process
Internal Services

Organizational Priorities

Priority Status Legend

Exceeded: More than 100 per cent of the expected level of performance for the priority identified in the corresponding RPP was achieved during the fiscal year.

Met All: 100 per cent of the expected level of performance for the priority identified in the corresponding RPP was achieved during the fiscal year

Mostly Met: 80 to 99 per cent of the expected level of performance for the priority identified in the corresponding RPP was achieved during the fiscal year

Somewhat Met: 60 to 79 per cent of the expected level of performance for the priority identified in the corresponding RPP was achieved during the fiscal year

Not Met: Less than 60 per cent of the expected level of performance for the priority identified in the corresponding RPP was achieved during the fiscal year

Priority 1: Enhanced approach to support proactive compliance	**Type[1]: Ongoing**	**Strategic Outcome 1 and Program Activity 1.1**

Status: Met All

- Successfully eliminated the claims backlog on target as outlined in the 3 year Backlog Elimination Plan
- High claimant uptake in the use of voluntary undertakings resulted in fewer orders and allowed workers earlier access to health and safety information
- Initiated review of the claims process in order to identify areas for improvement that aim to increase efficiency, effectiveness and economy
- Better tools have been put in place, such as the ingredient database, which facilitates common use by staff of information on chemical hazards
- Developed frameworks to help focus organizational thinking and action on identified outcomes for HMIRC's target audiences

[1] Type is defined as follows: **Previously committed to**—committed to in the first or second fiscal year before the subject year of the report; **Ongoing**—committed to at least three fiscal years before the subject year of the report; and **New**—newly committed to in the reporting year of the DPR.

Priority 2: Improved knowledge translation to support hazard classification and communication	Type[1]: Ongoing	Strategic Outcome 1 and Program Activity 1.1

Status: Met All

- Contributed to WHMIS committee discussions on policy and technical issues including the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) implementation in Canada
- Fostered collaboration and the sharing of health and safety information with Health Portfolio colleagues, including Health Canada's Healthy Environments and Consumer Safety Branch
- Continued to monitor GHS implementation abroad, particularly in the United States
- Published the HMIRC Multimedia Educational Tool (HMET), an interactive electronic presentation on the claims process, on the HMIRC website in response to claimant requests for online guidance tools and educational materials
- Participated in fora addressing worker health and safety issues, including the Commission de la santé et de la sécurité du travail du Québec (CSST) 2010 conference

Priority 3: Increased partnerships to better address hazard communication challenges	Type[1]: Previously committed to	Strategic Outcome 1 and Program Activity 1.1

Status: Met All

- Fostered collaboration with government, labour and industry through consultations with HMIRC's Council of Governors and WHMIS committees
- Informed exchanges with the Canadian Centre for Occupational Health and Safety on technical issues related to hazard classification
- Initiated a strategic partnership framework that will enable HMIRC to better leverage its knowledge, expertise and resources

Priority 4: Organizational cohesion and coherence	Type[1]: New	Internal Services
Status: Met All • Implemented the Integrated Plan 2010-12, including an associated logic model (linking inputs, activities and outputs to short, medium and long term outcomes), an evaluation methodology and an operational plan component, to reinforce alignment and cohesion across the organization • Renewed the Human Resources Strategy to support the Integrated Plan and to enable HR capacity and promote public service values and ethics • Created a Strong Workplace Action Team (SWAT), composed of managers and employees, to address workplace issues and transformation in order to make HMIRC a workplace of choice		

Risk Analysis

Operational Context

Labour, industry and government agree on the importance of preventing illnesses and injuries from hazardous materials in Canadian workplaces. In order to help achieve this goal WHMIS was created through the adoption of laws and regulations and the development of procedures in the late 1980s. WHMIS requires suppliers, including manufacturers, importers and distributors, and employers, to provide health and safety information about the chemicals produced or used in Canadian workplaces.

As part of the WHMIS initiative, the HMIRA and its regulations also came into force. This legislation established HMIRC, an independent agency with a quasi-judicial role. The Commission provides the mechanism in Canada to protect the confidential business information of chemical suppliers and employers and to ensure accurate and complete health and safety information is available to workers.

Risks and Opportunities

The Commission successfully eliminated a backlog of 512 claims by March 31, 2011 through three-year sunset funding (2008-11). The Commission will need to actively monitor the volume of claims for exemption registered in order to ensure it has the capacity to make accurate health and safety information available to workers in a timely manner.

The implementation of GHS in Canada will impact hazard communication under WHMIS. In order to contribute to the transmission of accurate and consistent information, HMIRC will need to continue to augment its knowledge base, participate in

implementation discussions and keep informed of national and international developments.

The exclusive work that the Commission performs allows it to gather unique information. Through increased analysis, synthesis and dissemination of this information and knowledge, HMIRC can enhance the completeness, accuracy, comprehensibility and accessibility of hazard communications.

Due to its size and the complexity and specialization of its work, it is essential to staff positions at HMIRC in an expedient manner to ensure appropriate capacity, continuity and corporate memory. A critical component in the accomplishment of the Commission's business objectives is the recruitment and retention of a skilled, motivated, representative and stable workforce, and one that meets the challenge of new and evolving science.

Summary of Performance

2010–11 Financial Resources ($000s)[2]

Planned Spending	Total Authorities	Actual Spending
5,704	5,973	6,066[3]

2010–11 Human Resources (FTEs)

Planned	Actual	Difference
54	43	11[4]

Strategic Outcome:

Performance Indicators	Targets	2010–11 Performance
Number of appeals as a percentage of total claims processed	Zero	Zero

($000s)

Program Activity	2009–10 Actual Spending	2010–11				Alignment to Government of Canada Outcome
		Main Estimates	Planned Spending	Total Authorities	Actual Spending	
Program Activity 1.1: Claims Exemption Process	5,845[5]	4,232	4,232	4,216	3,306	Healthy Canadians
Total	5,845	4,232	4,232	4,216	3,306	

($000s)

Program Activity	2009–10 Actual Spending	2010–11[2]			
		Main Estimates	Planned Spending	Total Authorities	Actual Spending
Internal Services		1,472	1,472	1,757	2,760

[2] Financial Resources equals the Total line for Program Activities and Internal Services.

[3] The difference is due to a technical financial transaction error – the transfer of funds from Salaries and Wages to O&M which incurred additional EBP costs - resulting in an over-expenditure of spending authorities.

[4] The difference in actual versus planned FTEs is due to the difficulty in recruiting qualified biologists with a specialization in toxicology, an identified shortage group in the public service and, in Internal Services, a review of administrative positions and the use of an interdepartmental MOU.

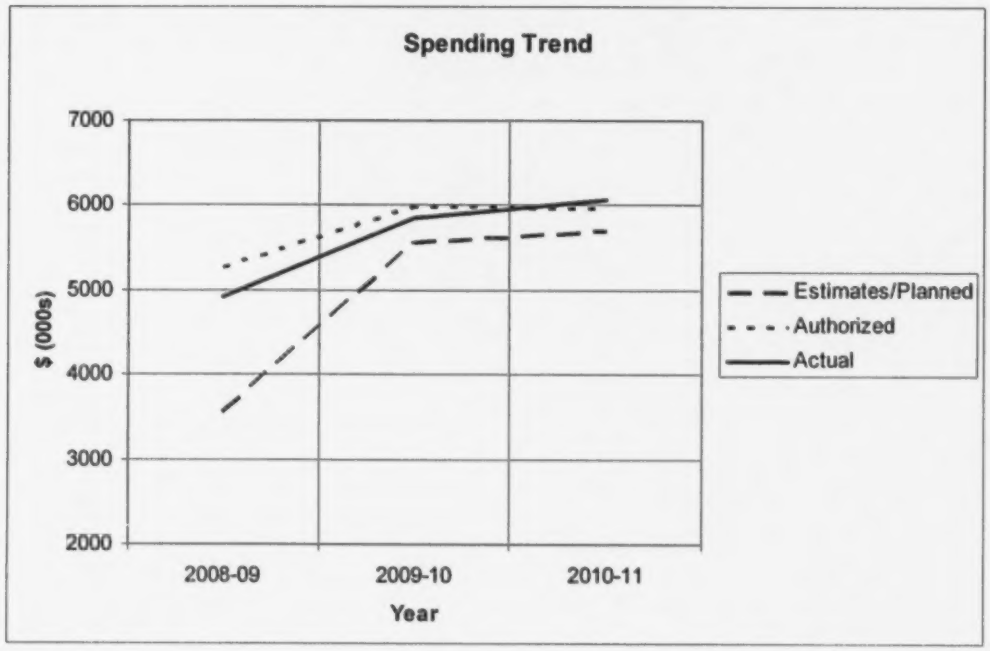
[5] Commencing in the 2009–2010 Estimates cycle, the resources for the Internal Services program activity are displayed separately from other program activities; they are no longer distributed among the remaining program activities, as was the case in previous Main Estimates. This has affected the comparability of spending and FTE information by program activity between fiscal years.

HMIRC, however, did not include Internal Services in its initial ARLU for 2009-2010 and therefore it was not part of either the Main estimates or the RPP for 2009-2010. Consequently, there is no data to report on for Internal Services for 2009-2010. Internal Services has been included in the RPP and Main estimates for HMIRC for 2010-2011 and on.

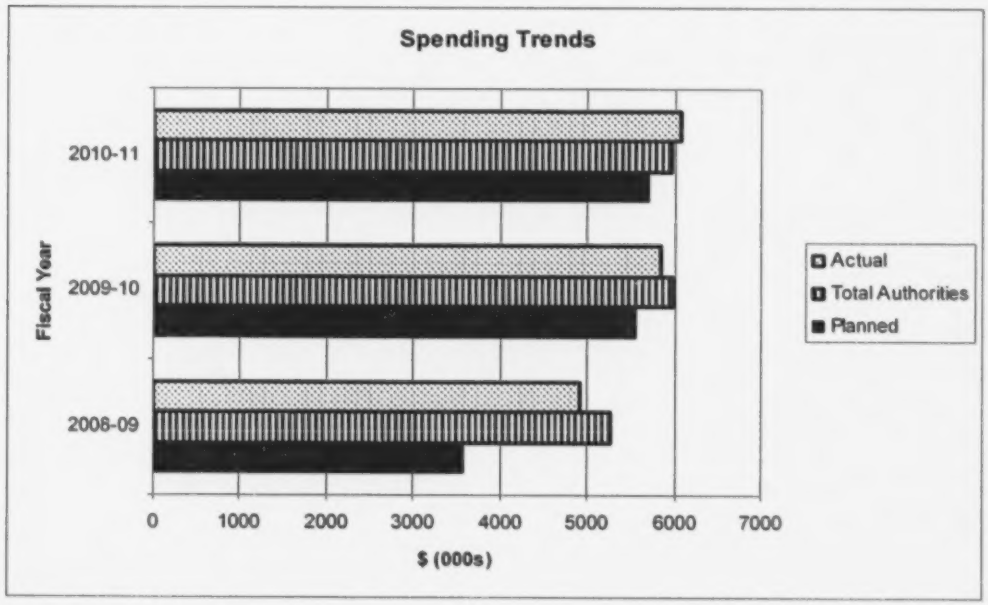
Expenditure Profile

Spending Trends ($000s)

Graph 1



Graph 2



In 2007-2008, HMIRC developed a plan to eliminate its backlog of claims for exemption over a three year period (2008-2011) and to prevent it from recurring. However, due to the size of the organization's A-Base, which in fiscal year 2007-2008 totaled $3.5 M, the Commission sought supplementary funding for each of the three years, as well as ongoing funding, for 2011-2012 and beyond, to ensure operational capacity and support functions.

In January 2008, Health Canada and HMIRC, in consultation with the Treasury Board Secretariat, and with concurrence of the Minister of Health, agreed that Health Canada would transfer $1.7 M to HMIRC to begin the work required to address the backlog through the 2008-2009 Supplementary Estimates A. The Annual Reference Level Update was identified as the appropriate mechanism for transferring supplementary funding of $2 M each year for 2009-2010 and 2010-2011, as well as $850 K for 2011-2012 and ongoing.

Estimates by Vote

For information on our organizational votes and/or statutory expenditures, please see the 2010–11 Public Accounts of Canada (Volume II) publication. An electronic version of the Public Accounts is available at http://www.tpsgc-pwgsc.gc.ca/recgen/txt/72-eng.html.

SECTION II: ANALYSIS OF PROGRAM ACTIVITIES BY STRATEGIC OUTCOME

Performance Status Legend

Exceeded: More than 100 per cent of the expected level of performance (as evidenced by the indicator and target or planned activities and outputs) for the expected result identified in the corresponding RPP was achieved during the fiscal year.

Met All: 100 per cent of the expected level of performance (as evidenced by the indicator and target or planned activities and expected outputs) for the expected result identified in the corresponding RPP was achieved during the fiscal year.

Mostly Met: 80 to 99 per cent of the expected level of performance (as evidenced by the indicator and target or planned activities and expected outputs) for the expected result identified in the corresponding RPP was achieved during the fiscal year.

Somewhat Met: 60 to 79 per cent of the expected level of performance (as evidenced by the indicator and target or planned activities and outputs) for the expected result identified in the corresponding RPP was achieved during the fiscal year.

Not Met: Less than 60 per cent of the expected level of performance (as evidenced by the indicator and target or planned activities and outputs) for the expected result identified in the corresponding RPP was achieved during the fiscal year.

Strategic Outcome

Trade secret exemptions are provided in a way that balances the right of industry to protect their confidential business information with the right of workers to receive accurate information concerning the health and safety hazards posed by chemicals in the workplace.

Program Activity:

Claims Exemption Process

Program Activity Description:

Under this activity, HMIRC registers claims for exemption received from a supplier or employer who wishes to withhold confidential business information, decides on the validity of the claim, adjudicates and issues decisions on the compliance of the material safety data sheet or label to which the claim relates, and administers an appeal process to these decisions.

2010–11 Financial Resources ($ 000s)

Planned Spending	Total Authorities	Actual Spending
4,232	4,216	3,306[6]

2010–11 Human Resources (FTEs)

Planned	Actual	Difference
39	32	7[7]

Expected Results	Performance Indicators	Targets	Performance Status
Claimants are able to sell their products without disclosing confidential business information within an appropriate amount of time	Percentage of claims registered within 7 days	100%	100% Met All
Workers are provided with corrected health and safety information within an appropriate amount of time	Percentage of claims for which the elapsed time between the registration of the claim and the issuance of the decision is within the target period	90% within 365 days	45% Not Met Percentage is lower than targeted due to rendering decisions on older claims from the backlog; the backlog was eliminated, as planned, by 31 March 2011.
Disputes are resolved prior to appeal	Percentage of disputes resolved prior to appeal	100%	100% Met All

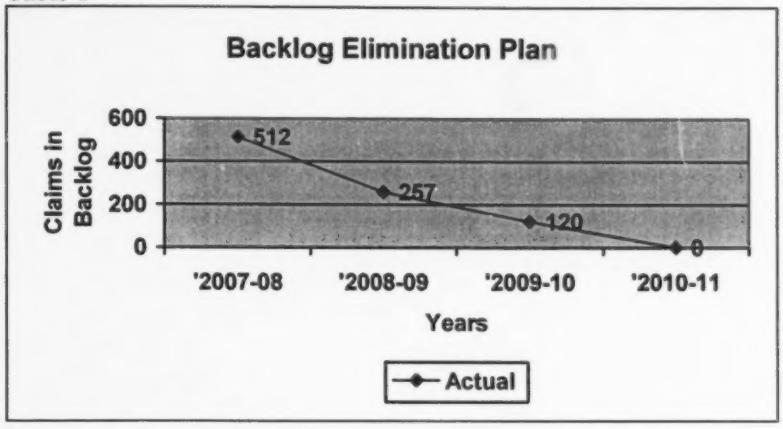
Performance Summary and Analysis of Program Activity

The Commission's Program Activity, the Claim Exemption Process, successfully completed the three-year Claims Elimination Plan (See Table 1 on following page). Elimination of the backlog of 512 claims from 2008 will significantly reduce the time between registering a claim and issuing a decision, providing workers earlier access to corrected health and safety information.

[6] The difference in spending reflects the first year of reporting separately on the Program Activity and Internal Services. See Internal Services below.

[7] The difference in FTEs reflects the use of temporary help services due to the difficulty in recruiting qualified biologists with a specialization in toxicology, an identified shortage group in the public service.

Table 1



In 2010-2011 the program registered 100% of claims with complete information within 7 days. This allowed claimants to sell their products in a timely manner while protecting confidential business information. The Commission showed a modest improvement in the percentage of claims reviewed within 365 days; the performance status noted above reflects decisions rendered on old claims from the backlog as well as on new claims.

Claims processing activity in 2010-11 is reflected in Table 2 below which provides detail on the number of claims at various points of the process. During this time, 312 new claims were registered with the Commission and 381 claims were processed by Commission staff via decisions (365) or withdrawals (16).

Table 2

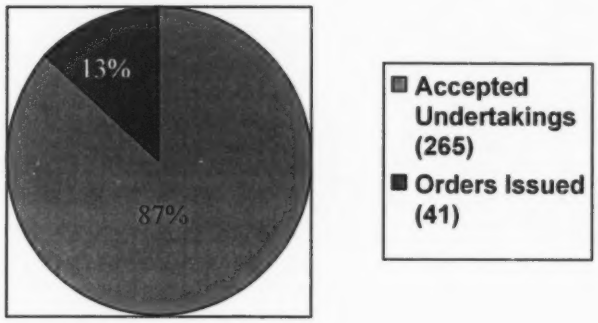
2010-11 Claims processing activity	Number of claims
Claims registered in 2010-11	312
Claims processed in 2010-11 Decisions / Compliant (59) Decisions / Compliant post undertaking (265) Decisions / Order issued (41) Withdrawals (16)	381
Claims in queue at 31 March 2011	323

Undertakings were initiated in revised legislation in 2008 to allow claimants to voluntarily correct errors and violations in MSDSs submitted with their claims. If

claimants agree to changes requested by the Commission and resubmit an approved MSDS within the period specified in the undertaking, a decision is rendered and published that the MSDS is compliant. When claimants resubmit the MSDS, they also send it out to their clients who purchase substances and employ workers; in this way compliant health and safety information is provided earlier to Canadian workers. This effectively reduces the number of orders issued by the Commission.

A review of data for voluntary undertakings by claimants in Chart 1 shows a significant number are taking advantage of this option. In 2010-11, 265 claimants or 87% who were originally assessed with non-compliant MSDSs, chose to voluntarily correct them mid way through the assessment process rather than wait for the Commission to order changes.

Chart 1 : Early Compliance through Voluntary Undertakings



The Commission continues to monitor and correct violations identified in MSDSs. Priority is assigned to claims using criteria based on the nature of the identified hazards of the product. Table 3 shows the trend over the last three years: a reduction in the total percentage of violations. Corrections made to accurately reflect hazard information on an MSDS can have significant correlation and application to other MSDSs prepared by the same claimant; the Commission would like to more actively promote this use of its expertise.

Table 3

Data description	2008-2009	2009-2010	2010-2011
Total violations	2861	1085	**1251**
Total number of claims (decisions issued)	504	240[8]	**365**
Average number of violations per claim	5.7	4.5[9]	**3.4**

Lessons Learned

Ongoing analysis of the number and type of MSDS violations may provide insight in the development of more proactive compliance measures in the future. The earlier claimants can produce compliant MSDSs, the earlier correct and accurate health and safety information will be available to Canadian workers.

Program Activity:

Internal Services

Program Activity Description:

Internal Services are groups of related activities and resources that are administered to support the needs of programs and other corporate obligations of an organization. At HMIRC these groups are: Management and Oversight Services; Communications Services; Human Resources Management Services; Financial Management Services; Information Management Services; Information Technology Services; Acquisition Services; and Travel and Other Administrative Services. Internal Services include only those activities and resources that apply across an organization and not to those provided specifically to a program.

[8] Results for 2009-10, as previously published in DPR 2009-10, inadvertently recorded data for 13 rather than 12 months. These results have been adjusted from 257 claims to 240, and 4.2 violations per claim to 4.5, in DPR 2010-11.
[9] Ibid.

2010–11 Financial Resources ($ thousands)

Planned Spending	Total Authorities	Actual Spending
1,472	1,757	2,760[10]

2010–11 Human Resources (FTEs)

Planned	Actual	Difference
15	11	4[11]

Performance Summary and Analysis of Program Activity

In 2010-11 the Commission completed the development of its Integrated Plan 2010-12. This plan effectively aligns activities and resources with strategic directions, supports its mandate and includes an evaluation methodology to measure success.

The Commission modernized its internal services to ensure compliance with current federal legislative frameworks based on renewed guiding principles including risk management. This will support decision-making and strengthen management accountability.

The Commission established SWAT to examine workplace issues and make recommendations on improvements in the workplace. Throughout the process, employees were regularly consulted and SWAT presented them with updates to ensure the transparency, accountability and usefulness of its conclusions. At the end of the year SWAT proposed a number of innovative ways to enhance various aspects of the Commission, including clarity of roles and responsibilities, information sharing, orientation and career management.

[10] This total includes contracted one-time initiatives undertaken in FY 2010-11 to address the renewal of integrated planning and information technology requirements.
[11] The difference in FTEs in Internal Services is due to a review of administrative positions and the use of an interdepartmental MOU.

SECTION III: SUPPLEMENTARY INFORMATION

Financial Highlights

Condensed Statement of Financial Position

As at March 31, 2011 ($)

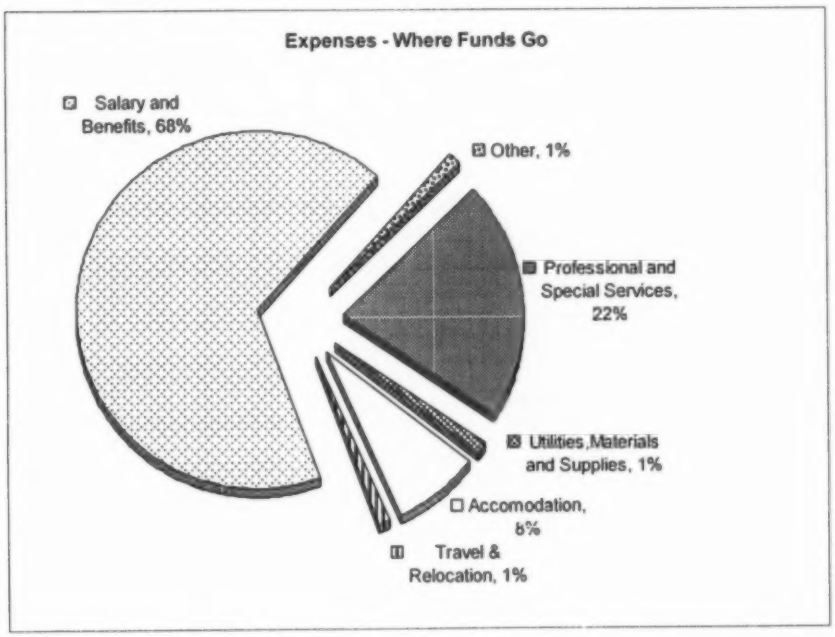
	% Change	2010-11	2009-10
Total assets	-72.5%[12]	136,937	497,624
Total liabilities	-14.5%	1,165,940	1,364,025
Equity of Canada	-18.8%	(1,029,003)	(866,401)
	-72.5%	136,937	497,624

Condensed Statement of Operations

For the year ended March 31, 2011 ($)

	% Change	2010-11	2009-10
Total expenses	5.4%	7,087,777	6,721,811
Total revenues	33.7%	485,683	363,287
Net cost of operations	3.8%	6,602,094	6,358,524

Financial Highlights Chart



[12] The change is the result of a decrease in Accounts Receivable and Accounts Payable from other government departments.

Financial Statements

This document can be found in the following link: http://www.hmirc-ccrmd.gc.ca/publications/fs-ef/fs-ef-1011-eng.shtml

List of Supplementary Information Tables

All electronic supplementary information tables found in the 2010–11 Departmental Performance Report can be found on the Treasury Board of Canada Secretariat's website at: *http://www.tbs-sct.gc.ca/dpr-rmr/2010-2011/index-eng.asp*.

- Sources of Respendable and Non-Respendable Revenue
- User Fees Reporting

SECTION IV: OTHER ITEMS OF INTEREST

Organizational Contact Information

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